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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
████████████████████

DECISION
Case #: FOS - 206641

PRELIMINARY RECITALS

Pursuant to a petition filed on October 20, 2022, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Saint A regarding Foster Care, a hearing was held on December 21, 2022, by telephone.

The issue for determination is whether the agency correctly revoked Petitioner's foster care license.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
████████████████████

Respondent:

Department of Children and Families
201 West Washington Avenue
Madison, WI 53703

By: Heather Miller
Saint A
6737 W. Washington St., Suite 4400
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.
2. On June 13, 2020, Saint A/Wisconsin Department of Children and Families wrote to petitioner to confirm that she was approved for Court Ordered Kinship Care of the children █████, █ and █, placed in her home on February 17, 2020. (Ex. R2)

3. On January 6, 2021, petitioner was approved to become a Foster Care family for [REDACTED], [REDACTED] and [REDACTED]. (Ex. R3)
4. On February 22, 2022, petitioner called licensing specialist [REDACTED] to report that police were at her home due to an argument between [REDACTED] and petitioner's daughter [REDACTED], in which [REDACTED] accused [REDACTED] of stealing marijuana and [REDACTED] got upset and barricaded himself in his room. Petitioner also reported that [REDACTED] stole 20 from her coat. (Ex. R7)
5. On February 24, 2022, petitioner admitted that she provided tobacco products for [REDACTED].
6. On February 27, 2022, the Department received a Child Protective Service Report regarding petitioner, alleging neglect of the child [REDACTED]. (Ex. R4)
7. On or about April 27, 2022, the agency completed an initial assessment regarding the CPS report, finding that neglect of A was unsubstantiated, but noting concerns about petitioner's judgment as a foster parent.
8. On April 28, 2022, Wellpoint care network wrote to petitioner to confirm the close of her foster care license. (Ex. R1)

DISCUSSION

The Wisconsin Administrative Code, Chapter DCF 56, sets out the duties of a foster parent. The licensee must be familiar with the Wisconsin Administrative Code, Chapter DCF 56, and must comply with its requirements. Wis. Adm. Code, §DCF 56.05(1)(c). Violation of administrative provisions may be grounds for revoking the foster home license. Wis. Stat., §48.715(4)(d). The agency contends that Petitioner violated §DCF 56.05(1)(a)2 and §DCF 56.05(1)(g)1, 2, and 9, which are noted here:

DCF 56.05 Licensee Qualifications sets forth the rules that foster parents must follow. The purpose of the law regulating foster care licenses is to protect and promote the health, safety, and welfare of children placed in foster homes. Wis. Stat. § 48.67; Wis. Admin. Code § DCF 56.01(1)(September 2011). The best interests of the child must always be the paramount consideration. Wis. Stat. § 48.01(1) intro.

Wisconsin Statute §48.64(4)(a) declares that any decision or order issued by an agency that affects the head of a foster home or the children involved may be appealed to the department under fair hearing procedures established under the department's rules. The Wisconsin Supreme Court has interpreted this to mean that foster parents are entitled to a fair hearing on decisions which affect the interests of foster parents even in settings in which the outcome of the hearing will in no way affect a child's placement. *Bingenheimer v. DHSS*, 129 Wis.2d 100, 102, 383 N.W.2d 898 (1986). Foster parents are entitled to use such a fair hearing to dispute the allegations of the county agency in order to clear their name, protect their interests in equitable treatment, and defend against mistaken, negligent, or arbitrary agency allegations. *Id* at 110.

Petitioner initially was granted a child-specific foster care license, to care for the grandchildren who were placed with her. On January 19, 2022 she was granted a general foster care license which allowed her to take placements of additional children.

Petitioner's foster care license was closed on April 28, 2022. The agency treated it as a closure, which is voluntary, rather than a revocation, believing that petitioner agreed with it. It did not issue the notice containing appeal rights that it normally would with a revocation, which is

contested by the licensee. Later, petitioner communicated that the closure was not voluntary and the agency did not object to treating it as a revocation and allowing her appeal to the Division.

The agency's revocation is based on allegations that petitioner 1) provided the foster child [REDACTED] with tobacco, 2) allowed someone who consumed alcohol to provide care of her grandchildren and foster child, 3) left her foster son and granddaughter unsupervised, which may have led to inappropriate touching; 4) is involved with adult daughter has unmanaged mental health concerns and does not appear to be an appropriate person to be around foster children, based on incidents in which the daughter [REDACTED] accused [REDACTED] of things that were not substantiated. These are bases for conclusion that she has lack of judgement and is aligned with daughter against foster children.

The agency bears the burden of establishing by the preponderance of the evidence that the conduct alleged occurred and that it is grounds for revocation. Wis. Admin Code, §HA 1.17(1).

The February 27, 2022 Child Protective Services report that led to the appealed action arose from a reported incident in which petitioner's adult daughter [REDACTED] took her five year old daughter [REDACTED] to petitioner's home and later reported that the foster child [REDACTED], age 14, put his finger in [REDACTED] vagina. The April 27, 2022 Initial Assessment noted concerns including that petitioner provided [REDACTED] with tobacco, allowed someone who consumed alcohol to care for her grandchildren, left her foster son and granddaughter unsupervised which may have led to inappropriate touching, was involved in the life of her adult daughter who has unmanaged mental health concerns and is inappropriate to be around foster children, petitioner is more aligned with the daughter than a foster child.

Petitioner admitted providing tobacco to [REDACTED], explaining that he was determined to go to the store and panhandle to buy tobacco and she thought it was preferable to provide it to him herself. Wis. Admin. Code 56.09(d) makes it clear that the foster parent may not permit the child to participate in an activity that would violate a court order or any federal or state statute, rule or regulation. It is illegal for a fourteen year old to consume tobacco. Petitioner not only allowed it but provided the tobacco herself. She was informed of the rules and violated this one. Regardless of difficulties in receiving treatment for [REDACTED], petitioner's choice to provide tobacco to a child is a serious violation of a rule intended to prevent harm to the child.

Regarding sleeping arrangements on or about February 27, 2022, there were no rule violations. On February 28, 2022, petitioner stated that the previous Saturday she took a nap and left the children in the care of her friends [REDACTED]. She stated that she allowed the children to stay up late and arranged for [REDACTED] to sleep in the downstairs bedroom on the bottom bunk while her grandson [REDACTED] slept on the top bunk and the child [REDACTED] slept in the toddler bed in the same room. It is not clear based on this record that [REDACTED] cared for children while consuming alcohol.

The rules require that each foster child shall be provided with a separate bed, except two related children of the same sex over the age of one and under 12 years of age may share a bed. DCF 56.07 (4)(a)(1). No foster child six years or older may regularly share a bedroom with another child of the opposite sex. DCF 56.07(4)(c). There are no rule violations regarding the sleeping arrangements on the date when [REDACTED] accused [REDACTED] of sexually assaulting her daughter. [REDACTED] slept in the room with other children by his own choice, it was not a regular occurrence and the girl was not six years or older. Finally, it was not established that any sexual touching occurred and it appears that there was no problem of any kind with the sleeping arrangements.

Regarding the incidents in which [REDACTED], the mother of petitioner's other foster children, accused [REDACTED] of the crime of stealing marijuana from her (and sexually assaulting her child) and engaged in angry, disruptive behavior, petitioner failed to provide nurturing care by protecting [REDACTED] from the actions of [REDACTED] that he believed was a campaign to have him removed from the home. Wis. Admin.

Code DCF 56.09(a) regarding nurturing care requires that petitioner provide the foster child with a humane physical and psychological environment, be respectful of the child as a person and not inflict or tolerate infliction of physical or verbal abuse, physical punishment or ill treatment. Petitioner did demonstrate alliance with [REDACTED] rather than the foster child to the extent that these rules were violated when she allowed [REDACTED] to treat [REDACTED] in a hostile and unfair manner. She also allowed him to be around marijuana brought into the home by [REDACTED]. He denied stealing the marijuana and there is no evidence other than [REDACTED] claim that he did, but he did admit knowing that it was present and where it was. There is also no evidence of the alleged sexual assault other than [REDACTED] accusation.

The agency did prove several clear and serious violations of the rules in DCF Ch. 56, the most serious of which are failing to provide nurturing care by allowing the hostile and disruptive presence of her unstable daughter [REDACTED] to negatively impact the foster child. These are subjective standards. Regarding whether they are grounds for revocation, the agency has discretion within the rules to grant, modify or revoke foster care licenses. It is not required to prove that its decision to revoke is the only possible decision or that reasonable minds could not disagree about it. It must prove that it acted within its discretion and authority I find that it did so. Petitioner's actions warrant revocation of her foster care license.

CONCLUSIONS OF LAW

The agency correctly exercised its discretion and authority in denying revoking petitioner's foster care license.

THEREFORE, it is

ORDERED

That the petitioners' appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

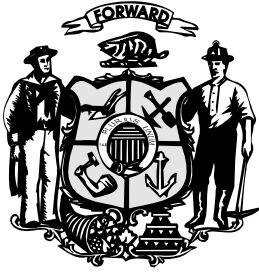
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of January, 2023

\s 

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 23, 2023.

Saint A
DCF - Foster Care